

EXHIBIT E

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF MASSACHUSETTS

3 Civil Action No. 03-12628-NG

4 *****

5 IN RE: BIOPURE CORPORATION

6 SECURITIES LITIGATION

7 *****

8 DEPOSITION OF JOHN G. ESPOSITO,
9 JR., a witness called on behalf of the
10 Defendants, taken pursuant to the Federal Rules
11 of Civil Procedure, before Maureen O'Connor
12 Pollard, RPR, CLR, and Notary Public within and
13 for the Commonwealth of Massachusetts, at the
14 offices of Bingham McCutchen LLP, 150 Federal
15 Street, Boston, Massachusetts, on the 31st of
16 May, 2006, commencing at 11:06 o'clock a.m.

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1 Q. And as you sit here, you cannot say
 2 one way or the other whether you sold shares of
 3 Biopure on August 5th, 2003?
 4 A. No.
 5 Q. Okay. And you can't say one way or
 6 the other whether you purchased Biopure prior to
 7 August 5th, 2003, is that fair?
 8 A. Correct. My recall was everything was
 9 done in August, so I don't -- this is -- I don't
 10 recall this. Why wouldn't he have that in my --
 11 MR. LONGMAN: Don't.
 12 THE WITNESS: I'm sorry, I'm talking
 13 to myself.
 14 BY MR. SAVERY:
 15 Q. Is this transaction here that's
 16 listed, this third one, the sale of Biopure
 17 shares on August 5th, 2003, is this something
 18 that you're complaining about in this action?
 19 MR. LONGMAN: Objection. Vague and
 20 ambiguous.
 21 A. I would say no.
 22 BY MR. SAVERY:
 23 Q. Okay.
 24 A. Because, first of all, I don't have

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1 the recall of the sale, and no, that would not
 2 be in the complaint, it would be the purchasing.
 3 Q. Okay. Regarding the August 12th
 4 purchase of Biopure shares, and again I'll refer
 5 back to Exhibit 46, do you see on page two of
 6 this exhibit it looks like there are two entries
 7 in this list relating to a purchase on August
 8 12th.
 9 Do you see that?
 10 A. Yes.
 11 Q. What I'd like to focus on is the word
 12 "solicited." Do you see that after "Biopure
 13 Corp. Class A" the word "solicited" appears?
 14 A. Yes.
 15 Q. Do you have an understanding of what
 16 that word means?
 17 A. No.
 18 Q. Okay. But it's your recollection that
 19 Mr. Harris didn't contact you to recommend that
 20 you buy Biopure?
 21 MR. LONGMAN: Objection. Asked and
 22 answered.
 23 A. I contacted him first, is that what
 24 you mean?

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1 BY MR. SAVERY:
 2 Q. Right.
 3 A. Right.
 4 Q. Before you purchased Biopure, did Mr.
 5 Harris actually recommend that you buy it?
 6 MR. LONGMAN: Objection. Asked and
 7 answered.
 8 A. No.
 9 BY MR. SAVERY:
 10 Q. Okay.
 11 A. The reason why I remember that vividly
 12 is because it's rare that I bring something to
 13 him, so the two were that I remember were Merck
 14 and this that I brought to him, because again
 15 I'm not that interested or involved with it.
 16 Q. Do you know what the price of the
 17 Biopure shares was that you bought on August
 18 12th?
 19 A. It says \$7.01 per share.
 20 Q. I'd like to turn to Exhibit 46. Do
 21 you see what the purchase price is in that
 22 exhibit?
 23 A. Yes.
 24 Q. Can you tell me what it was?

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1 A. \$7.01.
 2 Q. For how many shares?
 3 A. Quantity, I think it was 100 shares.
 4 Q. Okay. And how many did you buy on the
 5 12th?
 6 A. Apparently I bought 600 in all, 500 on
 7 the top and 100 on the bottom.
 8 Q. And what was the price of the 500?
 9 A. \$700 -- I mean \$7 a share.
 10 Q. \$7 per share?
 11 A. Mm-hmm.
 12 Q. And again turning to Exhibit 47 then,
 13 your certification.
 14 A. Yes.
 15 Q. Am I correct the certification says
 16 you purchased on August 12th, 2003 600 shares at
 17 \$7.01?
 18 A. Yes.
 19 Q. But in truth it was \$7.01 for 100 of
 20 the shares and \$7.00 even for 500, is that
 21 right?
 22 MR. LONGMAN: According to this
 23 document.
 24 A. Apparently.

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1 to this case, are you aware of the term IND?
2 A. No.
3 Q. Who is Carl Rausch?
4 A. He is one of the principals of the
5 company, I believe he was the technical head.
6 Q. Okay. Do you have any other
7 understanding of his role at Biopure?
8 A. No, just that he was one of the
9 principals.
10 Q. Okay. And when you say "principals,"
11 what do you mean by "principals"?
12 A. High ranking, high ranking
13 involvement.
14 Q. Is he a Defendant in this case?
15 A. Yes.
16 Q. How about Ronald Richards?
17 A. Yes.
18 Q. Is he a Defendant in this case?
19 A. Yes.
20 Q. Is he associated with Biopure, or was
21 he at the time of the underlying conduct?
22 A. I understand that he was, yes.
23 Q. And what was his role at Biopure?
24 A. I believe CFO.

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1 Q. Have you heard the name Howard
2 Richman?
3 A. Yes.
4 Q. Is he associated with Biopure, or was
5 he?
6 A. Richman was -- yes, I believe he was
7 on the board of directors.
8 Q. Any other role relative to Biopure?
9 A. I don't -- I don't know.
10 Q. Have you heard of C. Everett Koop?
11 A. Koop, yes.
12 Q. Who was he?
13 A. He was the past Secretary of Health.
14 Q. Does he have any connection with
15 Biopure?
16 A. I have no idea.
17 Q. Have you heard of Thomas Moore?
18 A. Yes.
19 Q. Who was he?
20 A. He was again a higher ranking official
21 at Biopure. I don't know if he was CEO or
22 president.
23 Q. Have you heard the term "PDUFA"?
24 A. No.

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1 Q. Do you know what the name of this case
2 is, this litigation, the title of the case?
3 A. The title of the case, no.
4 Q. Do you know in what court the case is
5 pending?
6 A. No.
7 Q. Okay. In what state?
8 A. Massachusetts, I believe.
9 Q. What is a class period?
10 A. It is the period of time where the
11 Plaintiffs have purchased stock.
12 Q. Okay. And what is the class period in
13 this case?
14 A. From April, I think April 9th of '03
15 to December 24th.
16 Q. Okay. Have you heard the term
17 "complete response letter"?
18 A. Yes.
19 Q. What's a complete response letter?
20 A. That's when the FDA will send a final
21 notice with their concerns to a company. In
22 this case I could further answer that.
23 Q. Sure.
24 A. I think it was in July they sent one

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1 to Biopure with, I think, 200 questions that
2 they needed to be answered where they had
3 concerns.
4 Q. Okay. Have you ever seen the complete
5 response letter?
6 A. No.
7 Q. The document that you assert is a
8 complete response letter?
9 A. No, I have not.
10 Q. Have you seen any written documents in
11 the form of correspondence between Biopure and
12 FDA?
13 A. Between Biopure and FDA? I don't
14 believe so.
15 Q. Who is Stuart Gottlieb?
16 A. He's one of the Plaintiffs.
17 Q. Have you heard the term "clinical
18 hold"?
19 A. Yes.
20 Q. What's a clinical hold?
21 A. I believe it means that the company is
22 no longer able to conduct any further clinical
23 trials of the drug.
24 Q. Okay. Does that term have any

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1 Q. Yes. Sure.
2 A. You asked me if it was more risky than
3 Merck, and I said yes.
4 Q. Okay.
5 A. That was the context of what I
6 thought.
7 Q. Did you consider it to be one of your
8 more risky investments?
9 A. No, I've had some -- although just
10 playing with stock. No, I've had more that I
11 thought were more risky, not many, because I
12 don't invest that much.
13 Q. Can you give me an example of a stock
14 that you've invested in that was more risky?
15 A. Stocks that are very cheap, penny
16 stocks. One, the most recent one is named
17 Schram, I believe, and a friend said this
18 company has possibilities in the tech market,
19 and it was like, you know, \$.50 a share or
20 something like that, so that I consider just a
21 crap shoot, and I don't do that very frequently.
22 Q. Okay. Have there been other penny
23 stocks you've invested in?
24 A. Maybe one other, which I don't

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1 remember.
2 Q. Okay. Apart from the penny stocks,
3 have there been any stocks that you consider to
4 be more risky than Biopure that you invested in?
5 A. I don't recall.
6 Q. Turning back to Exhibit 46 in front of
7 you, turn to the second page, there's a
8 reference there to a buy on August 21st.
9 Do you see that?
10 A. Yes.
11 Q. Did you, in fact, purchase 600 more
12 shares on August 21st?
13 A. Yes.
14 Q. And at that point the price was \$8.22?
15 A. Yes.
16 Q. So in the nine days since you had
17 purchased your first shares, the stock had risen
18 over a dollar, is that right?
19 A. Yes.
20 Q. You were aware, it's fair to say, that
21 there were fluctuations in the price of Biopure
22 stock?
23 A. Yes.
24 Q. Did you make this purchase through Mr.

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1 Harris?
2 A. Yes.
3 Q. And how did that purchase come about?
4 A. Again just verbally, phone call, and
5 then mail a check, that kind of thing.
6 Q. Who first came up with the idea of an
7 additional --
8 A. I did.
9 Q. -- position?
10 And why did you decide you wanted to
11 buy?
12 A. I thought I wanted to be in a position
13 of about around that figure, nine, 10,000, but I
14 decided to do a little bit conservatively first,
15 half first and then see what happened. And then
16 sure enough, in a week or so the stock went up,
17 so I thought well, gee, this would be warranted,
18 so I purchased more.
19 Q. Okay.
20 A. And that was as much as I wanted to
21 purchase.
22 Q. Okay. So when you first bought on
23 August 12th, you had in mind that you'd possibly
24 go up to the \$9,000 range?

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1 A. Right. And apparently I must have
2 again, because if the other thing was correct, I
3 must have had prior experience of a buy and a
4 sell according to this thing here in early
5 August, so that might have been --
6 MR. LONGMAN: Could I hear his
7 question again?
8 (Whereupon, the reporter read back the
9 pending question.)
10 A. The answer is yes.
11 BY MR. SAVERY:
12 Q. Okay. And you mentioned in your
13 answer, your prior answer to that, that's the
14 sale that's reflected in your certification,
15 right?
16 A. Yes.
17 Q. But again as you sit here, you have no
18 recollection of that sale, correct?
19 A. Right.
20 Q. And you have no recollection of
21 holding Biopure prior to August 12th?
22 A. Correct.
23 Q. And you can't say as you sit here if
24 you did hold prior to August 12th when you

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<p style="text-align: right;">Page 122</p> <p>1 bought?</p> <p>2 A. Correct.</p> <p>3 Q. Okay. Now, between your purchase of</p> <p>4 Biopure stock on August 12th and your next</p> <p>5 purchase on August 21st, did you receive any</p> <p>6 information from any sources regarding Biopure?</p> <p>7 A. Just when I -- we checked with Mr.</p> <p>8 Harris he said -- he quoted a price, that it had</p> <p>9 gone up, and that's when I decided to buy more.</p> <p>10 Q. Okay. So was that your first</p> <p>11 conversation with Mr. Harris regarding Biopure</p> <p>12 after you had bought on August 12th?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. And was that conversation then</p> <p>15 on August 21st, is that when you would have</p> <p>16 spoken to him?</p> <p>17 A. Yes, probably.</p> <p>18 Q. Okay. So just to be clear, you didn't</p> <p>19 talk to Harris regarding Biopure between the</p> <p>20 12th and the 21st?</p> <p>21 A. I can't remember exactly, but I would</p> <p>22 guess yes, that is correct. Because that's when</p> <p>23 I bought it. So classically if we discuss it</p> <p>24 and I'm impressed by the results, I would order</p>	<p style="text-align: right;">Page 124</p> <p>1 on-line, the Internet, or Mr. Harris, and</p> <p>2 ultimately Mr. Harris, and that's when I decided</p> <p>3 to buy more.</p> <p>4 Q. When you spoke to Mr. Harris prior to</p> <p>5 your second purchase, what did he say to you</p> <p>6 regarding Biopure, if anything?</p> <p>7 MR. LONGMAN: Asked and answered.</p> <p>8 Answer it again.</p> <p>9 A. Just that it went up.</p> <p>10 BY MR. SAVERY:</p> <p>11 Q. Anything else?</p> <p>12 A. No, he didn't have any further</p> <p>13 information other than the prior information</p> <p>14 from before I bought the first on the 12th. He</p> <p>15 didn't add anything.</p> <p>16 Q. Okay. Fine.</p> <p>17 And did you comment to him regarding</p> <p>18 Biopure during your conversation, apart from the</p> <p>19 fact that you wanted to buy more?</p> <p>20 A. Just that it seemed like it was on the</p> <p>21 rise, so I thought that, well, yes, maybe this</p> <p>22 is a good stock, because again we were still</p> <p>23 quite impressed by the potential.</p> <p>24 Q. Okay. And again to be clear, before</p>
<p style="text-align: right;">Page 123</p> <p>1 it at that time.</p> <p>2 Q. So just to be clear, there's no</p> <p>3 recollection of any interim report coming in?</p> <p>4 A. Right.</p> <p>5 Q. And did you check the market price of</p> <p>6 Biopure between the 12th and when you next spoke</p> <p>7 to Harris regarding Biopure?</p> <p>8 A. Yes, that's why -- yes. The fact that</p> <p>9 it went up from seven to eight?</p> <p>10 Q. Yes, sorry.</p> <p>11 Just so it's clear, did you yourself</p> <p>12 go and try to look up the market price or did</p> <p>13 you -- was it not until you spoke to Harris?</p> <p>14 A. That I could do --</p> <p>15 MR. LONGMAN: Mr. Harris.</p> <p>16 A. Mr. Harris, yes, I could look it up on</p> <p>17 the computer and find that it was going up, and</p> <p>18 that's probably what prompted my call.</p> <p>19 BY MR. SAVERY:</p> <p>20 Q. Okay. So as you sit here, do you</p> <p>21 recall that you monitored the price of Biopure</p> <p>22 stock after you first bought it on the 12th?</p> <p>23 A. I can't exactly recall. It was either</p> <p>24 one way or the other I found out, either from</p>	<p style="text-align: right;">Page 125</p> <p>1 you bought your second holding in Biopure from</p> <p>2 the time you bought your first, that period of</p> <p>3 time now, you didn't go out and do any of your</p> <p>4 own research?</p> <p>5 A. No.</p> <p>6 MR. LONGMAN: Objection. It is clear</p> <p>7 already.</p> <p>8 MR. SAVERY: If you have an objection,</p> <p>9 state it. I'm not here to answer your</p> <p>10 questions.</p> <p>11 MR. LONGMAN: Then stop repeating the</p> <p>12 same questions. We want to get out of here, we</p> <p>13 don't want to stay here for repetitive</p> <p>14 questions.</p> <p>15 MR. SAVERY: Fine.</p> <p>16 Did I get an answer to that question?</p> <p>17 (Whereupon, the reporter read back the</p> <p>18 above answer.)</p> <p>19 BY MR. SAVERY:</p> <p>20 Q. As of August 21st, was your</p> <p>21 understanding, regarding the status of Biopure's</p> <p>22 effort to obtain FDA approval, was your</p> <p>23 understanding the same as what the status was as</p> <p>24 of August 12th when you first bought?</p>

32 (Pages 122 to 125)

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1 A. When Harris referred me to him a
2 couple years before that.

3 Q. Why did you decide to bring your
4 claims in a class action?

5 A. I really felt that what they did was
6 not really right, to tell you the truth. I
7 really felt that it was kind of misleading --
8 not misleading, it was really, by omission it
9 was really not playing fair. The fact that
10 those two significant events were withheld, and
11 the fact that they were selling while other
12 people were buying, I thought that was really
13 not fair for those principals to do.

14 Q. Are you familiar at all with the
15 requirements for bringing a suit as a class
16 action?

17 A. No.

18 MR. LONGMAN: Objection.

19 BY MR. SAVERY:

20 Q. Do you have an understanding as to
21 what it means to be a representative of a class
22 or a sub-class?

23 A. Yes.

24 Q. What does it mean?

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1 A. My job is to oversee, although it's of
2 course as a layman, what happens legally, what
3 the lawyers are doing, and to let -- make sure
4 that the rest of the class knows what's
5 happening through them, and participate in any
6 like decisions, if there's an offer or something
7 of that sort.

8 Q. Okay. And are you willing to testify
9 at trial if the case goes to trial?

10 A. Yes.

11 Q. Do you have a fee agreement with Mr.
12 Longman's firm?

13 A. No.

14 Q. Do you have any written agreement at
15 all with Mr. Longman?

16 A. No. He just mentioned that --

17 MR. LONGMAN: Objection. I'm going to
18 object to disclosing attorney/client
19 communications.

20 THE WITNESS: Okay.

21 MR. LONGMAN: I want you to be able to
22 answer the question as to whether there's an
23 agreement or not, but I don't want you to
24 disclose our communications.

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1 MR. TUCCILLO: Can you read the last
2 question and answer?

3 (Whereupon, the reporter read back the
4 above question and answer.)

5 BY MR. SAVERY:

6 Q. Apart from any written agreement, do
7 you have any verbal agreement regarding your
8 engagement of Mr. Longman as your attorney?

9 A. My expenses.

10 Q. What is the agreement relative to your
11 expenses?

12 A. Travelling, travelling expenses to
13 get -- schlep from New York to here.

14 Q. I'm wondering what the agreement is
15 relative to those expenses.

16 A. That he would reimburse those
17 expenses.

18 Q. Okay. Have you paid any money to any
19 lawyers representing you in this case?

20 A. No.

21 Q. Have you agreed to pay any costs for
22 bringing this action?

23 A. Yes. But as I understand it, if
24 there's -- there's a contingency fee, of course,

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1 that the lawyers get. If they lose I would be
2 responsible for my percentage of their fee,
3 which is going to be relatively small since I'm
4 a small shareholder.

5 Q. When you say you'd be responsible for
6 your percentage of the fees, is that the
7 attorney fees?

8 A. Yes.

9 MR. LONGMAN: Objection.

10 BY MR. SAVERY:

11 Q. What about expenses?

12 A. What expenses?

13 Q. To the extent there are any additional
14 expenses such as you flying up here.

15 A. Oh, oh, I don't know the exact nature
16 of the -- you know, those numbers.

17 Q. Do you know who's responsible for
18 paying those expenses?

19 A. The expenses of?

20 Q. For instance, flying up here, or any
21 travel the lawyers have to do.

22 A. My expenses now I was told would be
23 reimbursed by the -- because that becomes their
24 expenses. Now, if there's a -- if they lose the

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<p style="text-align: right;">Page 162</p> <p>1 case, we all have to pay them, reimburse them. 2 My portion would be commensurate with the 3 percentage of stock that I have. 4 Q. Okay. So it's your understanding, 5 then, that all holders of Biopure stock who fall 6 within the class in this case would be 7 responsible for -- 8 A. Yes, if they're in the suit, yes. 9 Q. Sorry, so I can finish the question. 10 -- would be responsible for 11 compensating Mr. Longman's firm for his fees and 12 expenses? 13 MR. LONGMAN: Objection. 14 A. Yes. 15 BY MR. SAVERY: 16 Q. You mentioned the term "contingency 17 fee." 18 A. Right. 19 Q. What is a contingency fee? 20 A. It means that the attorney gets paid, 21 upon winning a case he gets paid a percentage of 22 what is won of the settlement or whatever. 23 Q. Okay. Do you have an understanding of 24 what the contingency fee percentage is for your</p>	<p style="text-align: right;">Page 164</p> <p>1 at yesterday's deposition, showing them to you 2 and just asking you one or two questions about 3 each. 4 Showing you now what's been marked 5 Exhibit 26 (handing). And with respect to any 6 of these, take as much time as you need to look 7 through them. 8 My first question concerning each is 9 going to be; have you seen this document before? 10 A. No. 11 Q. Okay. That's all for that one. 12 Next one, 27 (handing). 13 A. I haven't seen this one either. 14 Q. Okay. That's Exhibit 27? Yes, that's 15 Exhibit 27? 16 A. Yes. I'm sorry. 17 Q. I'm showing you now what's been marked 18 as 28 (handing). And for each of these what I'm 19 wondering is if you've seen that specific 20 document or one that's in a similar form. 21 A. Yes, I understand that it's either 22 this or something like it. 23 Q. Similar, it could have been in a 24 different form.</p>
<p style="text-align: right;">Page 163</p> <p>1 engagement of Mr. Longman? 2 A. My -- I may have assumed this, that 3 it's a third. So I really can't say. 4 Q. Has anyone promised you a certain 5 amount of money if the case settles? 6 A. Certain amount of money? No. 7 Q. Has anyone suggested to you that you 8 will recover more than any of the other class 9 members in this case on a percentage basis? 10 A. No, but that's a damn good idea. 11 Q. But it hasn't been suggested? 12 A. No. 13 Q. Okay. Just for the benefit of 14 counsel. 15 A. Do you want to change lawyers? 16 Q. I don't think you want to do that. 17 MR. LONGMAN: Do you want to take a 18 quick break? 19 MR. SAVERY: Sure. 20 (Whereupon, a recess was taken from 21 2:52 p.m. to 3:08 p.m.) 22 BY MR. SAVERY: 23 Q. Dr. Esposito, I'm going to be going 24 through a number of documents that were marked</p>	<p style="text-align: right;">Page 165</p> <p>1 A. The answer is no to this one as well. 2 Q. Okay. I show you the next document. 3 It's been marked Exhibit 29 (handing). Have you 4 seen this before today? 5 A. No. 6 Q. Okay. The next document, Exhibit 30 7 (handing). Have you seen that document before? 8 A. No. 9 Q. Okay. I'm showing you now what's been 10 marked Exhibit 31 (handing). Have you seen that 11 document before? 12 A. No. 13 Q. Showing you what's been marked Exhibit 14 32 (handing). Have you seen that document 15 before? 16 A. No. 17 Q. Showing you what's been marked Exhibit 18 33 (handing). Have you seen that document 19 before? 20 A. No. 21 Q. Showing you what's been marked Exhibit 22 34 (handing). Have you seen that document 23 before? 24 A. No.</p>

42 (Pages 162 to 165)